

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

STERICYCLE, INC.

and

**Cases 32-CA-24230
32-CA-24326**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS, AND HELPERS,
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA**

ORDER¹

For the reasons more fully set forth below, the Respondent's motion to disqualify Jason Rabinowitz as Union counsel is denied without prejudice to the Respondent's ability to renew the motion before the judge (and, as appropriate, before the Board on exceptions to the judge's decision), insofar as the motion is based on an asserted conflict of interest. To the extent that the Respondent

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___ F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 ___ F.3d 654 ___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 ___ S.Ct. 488 (___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Bay Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

seeks to disqualify Rabinowitz for other alleged misconduct, the Respondent's motion is denied with prejudice.²

With regard to the conflict-of-interest issue, we decline to rule on whether the facts as alleged here by the Respondent would constitute a basis for disqualifying Union counsel in an unfair labor practice proceeding.³ Rather, we shall allow the Respondent, if it so desires, to raise the conflict-of-interest issue at the forthcoming unfair labor practice hearing, in order to develop a full factual record that would provide a basis for evaluating the Respondent's contention that a disqualifying conflict of interest exists.⁴

With regard to the allegations of misconduct, such "allegations [] are not to be presented to the Board in the first instance." *675 West End Owners Corp.*, 345 NLRB 324, 326 (2005) (citing *McAllister Towing & Transportation*, 341 NLRB 394 fn. 7 (2004); *Bethlehem Temple Learning Center*, 330 NLRB 1177, 1178 (2000)). Rather, allegations of misconduct are to be submitted to the investigating officer (Associate General Counsel Richard Siegel) pursuant to Section 102.177 of the Board's Rules and

² If the alleged facts underlying the Respondent's allegations that Rabinowitz engaged in misconduct relate to the question of whether a conflict of interest exists, those alleged facts may be taken into consideration regarding that limited issue.

³ The Board has decided whether a conflict of interest existed in other contexts, but not in the precise context presented here. See, e.g., *Terrace Gardens Plaza, Inc.*, 315 NLRB 749, 749 fn.1 (1994) (Board rejected argument that counsel for the General Counsel should be disqualified because she served as a hearing officer in the underlying representation case and investigated contemporaneous charges brought by employer against union that formerly represented employees); *Hillview Convalescent Center*, 266 NLRB 758 (1983) (discussing Board rule precluding former Board attorneys from appearing before the Board in cases that were pending at the time of employment).

⁴ Although the attachments to the Respondent's motion contain excerpts from the transcript of the hearing in the underlying representation proceeding, the issue of whether Rabinowitz should be disqualified due to an alleged conflict of interest was not squarely presented and litigated in that proceeding.

Regulations. The Respondent has already availed itself of the procedures set forth in Section 102.177, and the investigating officer has determined that an investigation is warranted as to the limited allegation that Rabinowitz improperly introduced confidential fee-arrangement letters in a Board proceeding. With regard to the Respondent's remaining allegations of misconduct, which directly involve the federal court action and are tangential to the Board proceeding, the investigating officer has determined that these allegations are not appropriately pursued through the Board's misconduct procedures.⁵ The investigating officer's determination not to initiate disciplinary proceedings is final, as stated in Section 102.177(e)(2) of the Board's Rules and Regulations.

Dated, Washington, D.C., January 28, 2010

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

⁵ The investigating officer noted that, while it was the Respondent's decision whether to bring these matters to the attention of another forum, "it appears that the appropriate authority to address these issues is the California Bar."